

Application No.: 10/071,667

Docket No.: OSTEONICS 3.0-380

**IN THE DRAWINGS**

Applicants have attached a new copy of the photographs and drawings which were submitted on February 24, 2003.

Attachment: Replacement Sheets

**REMARKS**

Reconsideration and withdrawal of the rejection of all the claims now in the application (i.e. claims 1-4, 6, 9-13, 15-18, 79, 82-87, 89-93, 95-98, 101-103

Initially, the Examiner objected to the drawings because of minor informalities. Apparently the photographs and formal drawings submitted on February 24, 2003 could not be located. Applicants have attached a new copy of the photographs and drawings which were submitted at that time.

The Examiner then rejected claims 1-4, 6, 8-10, 14, 15, 102 and 103 as being anticipated by Pinkhasov U.S. Patent No. 5,011,638. The Examiner considered that the metal cell openings fell within a range of 100 microns to 1000 microns due to the 10 to 100 pores per linear inch disclosed causing an average pore size of 250 microns. It would appear to the Applicants that there are 25,400 microns per inch. Therefore, the low end of the pore size range would be 254 microns (100 pores per inch) to the larger size which is 2,540 microns (10 pores per inch). Having pointed this out Applicants note that Pinkhasov in column 4 makes it clear that it is the foam which has a pore size of between 10 and 100 pores per linear inch which foam is a flexible ester-type polyurethane foam. The pore size does not relate to a final metal product. Applicants have added to the claims that the final pore size is between 100 and 1000 microns which is compatible with pore sizes for encouraging tissue ingrowth. Applicants have also added to all claims that the metal and metal powder are biocompatible. The nickel alloys of Pinkhasov are not biocompatible. The intent of Pinkhasov is to produce highly porous battery electrodes.

It is submitted that by limiting the claims to biocompatible materials and a specific final pore size for tissue ingrowth the anticipation rejection over Pinkhasov is overcome. Pinkhasov does not teach a final pore size. In fact,

Pinkhasov teaches compressing the sintered foam which would change the final pore size even in one were stated.

With regard to claim 15 which is dependent from claim 1, Applicant has added that the individual particles have a size from 40 to about 80 microns. Obviously, such is not taught by Pinkhasov and the Examiner's contention that after sintering particles will bond together thereby making larger particles is not the intent of what is being claimed.

The Examiner goes on to reject claims 11-13, 16-18, 79, 82-98 and 101 as being obvious and therefore unpatentable over Pinkhasov in view of Kaplan, U.S. Patent 5,282,861. The Kaplan reference teaches using chemical vapor deposition to cover a carbon or graphite porous matrix. There is no teaching or suggestion in Kaplan that the matrix should be covered by metal particles as claimed. Furthermore, one skilled in the orthopedic art endeavoring to design bone ingrowth structures would not consider art teaching the use of non-biocompatible nickel alloys for forming porous battery electrodes. As pointed out by the Examiner, Kaplan actually states that the chemical vapor deposition method is superior to that of sintering, a step which is contained in each of the claims of the present application. This also teaches away from its combination with Pinkhasov which teaches sintering.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/071,667

Docket No.: OSTEONICS 3.0-380

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 21, 2006

Respectfully submitted,

By 

Raymond W. Augustin

Registration No.: 28,588

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

LD-447\